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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL No. 7 OF 2006
WITH
LETTERS PATENT APPEAL No. 8 OF 2007
WITH
LETTERS PATENT APPEAL No. 18 OF 2007
WITH
LETTERS PATENT APPEAL (St.) No. 183 OF 2007

Office notes, :
office memoranda :
of coram, :
appearances, :
Court's orders : Court's or Judge's
directions & : order
Registrar's :
orders :

Mr. A. V. Anturkar, Sr. advocate i/b S. B. Deshmukh, advocate for appellant in LPA No. 7/2006 and 8/2006.

S. Anney, Sr. advocate i/b Sanjay Kshirsagar for respondent No.5 in LPA No. 7/2006 and for respondent Nos. 1 to 7 in LPA No. 8/2006, and for respondent Nos. 1 to 6 in LPA St. No. 18/2006, and for respondent No.3 in LPA St. No. 183/2007

Mr. N. V. Walawalkar, Sr. advocate i/b S. N. Gawade for respondent No.1 & 2 in LPA No. 7/2006. APP in LPA (St.) 183/2007.

Mr. Y. S. Jagirdar, Sr. advocate with Ms. Nina Kapadia i/b M/s. Pandya Gandhi & Co. for respondent No. 7 in LPA No. 7/2006, for respondent No.11 in LPA No. 18/2006, for respondent No.5 in LPA (St.) No.183/2007.

Mr. Nusrat Shah with A. K. Gupta, Ms. Pervin Contractor, V. A. Almeida, Ms. Ema Almeida, Maqbool Ansari i/b Ms. K. A. Sayed, Advocates for respondent No. 31 in

LPA No. 7/2006.

Mr. Rupesh Bobade i/b Umesh Mankapure for respondent No. 34 in LPA No. 8/2006.

Mr. Nusrat Shah, a/w S. S. Kazi, advocates for respondent No. 30 in LPA No. 8/2006.

Mr. A. S. Kode, advocate i/b Ajay Misar & Co. APP in LPA No. 18/2006.

Mr. R. M. Patne, AGP for respondent/State.

CORAM: J. N. PATEL,
AND
A. A. SAYED, JJ.

DATE : JULY 26, 2007.

P.C.:

. Heard the learned counsel for the parties. These Letter Patent Appeals have been filed by Haji Abdulrajjak Yasin Patel, impugning the order dated 21st December 2005 passed by the learned Single Judge of this Court in Writ Petition No. 3965 of 2005 and 4151 of 2005 filed by M/s. Rajvi Buildwell Pvt. Ltd. and others. Haji Abdulrajjak Yasin Patel who claims to be interested (in the subject matter as a beneficiery) in the order of the Jt. Charity Commissioner Pune, dated 19-4-2005 refusing to grant

permission under section 36 of the Bombay Public Trust Act 1950 to the petitioner for sale of the Trust property which forms the subject matter of the 2 Writ Petitions. There is no controversy over the fact that initially the respondent Trust has been registered under the provisions of the Bombay Public Trust Act 1950, bearing PTR No. B-189 (ANR). The Trust owns land bearing survey Nos. 20,21, 22 and 23, admeasuring 15 hectares and 29 Ares, situate at Savedi, Ahmednagar. The Trust had applied to the Charity Commissioner under S. 36 of the Bombay Public Trust Act 1950, for obtaining its sanction to dispose of the aforesaid property to M/s. Rajvi Buildwell Pvt. Ltd., who was the highest bidder, in response to the notice, inviting the tender for the disposal of the said property. By the order dated 1-12-2005 the Jt. Charity Commissioner directed that the petitioners should invite fresh tenders by issuing advertisements in

reputed newspapers. Therefore, in compliance of the said order, advertisement came to be issued and in all 7 persons participated in the bid. According to the Trust, the offer of M/s. Rajvi Buildwell Pvt. Ltd. was only eligible, having fulfilled the terms and conditions of the tender and its offer was the highest bid in the sum of Rs. 5 Crores, for the said property. The petitioner made an application to negotiate the bid, this request was turned down by the Jt. Charity Commissioner and he rejected the application by the impugned order.

2. The learned Single Judge allowed the petition for the reasons stated in the impugned order which need not be reproduced in detail, as it was of the opinion that the Trust was entitled to sell the property, subject to following conditions, namely "that the amount received from the sale of the said property will be utilized by the petitioners

only for the purpose of administration of the trust and towards achieving the objects of the said Trust as per the scheme which is in operation, and secondly that out of the said amount, the Trust will buy another immovable property as offered by them before the Charity Commissioner as well as before me for the purpose of installation of Masjid and for carrying out other activities of the said Trust".

3. It appears from the order that the learned Single Judge after being satisfied that the Trust is entitled for sanction to dispose of the property, rather than remanding the matter to the Charity Commissioner in the peculiar facts and circumstances of the case, negotiated the bid in the Court itself and accepted the offer of M/s. Rajvi Buildwell Pvt. Ltd. who had offered to pay Rs. 20 Crores.

4. The appellant challenged the impugned order on various grounds, and we do not propose to go into the merits of the matter, as prima-facie we are satisfied that the property is a Waqf property (which is also a matter of controversy), as pointed to us by the learned counsel appearing for the Waqf Board, who drew our attention to the notification issued by the Govt. of Maharashtra in the Official Gazette, published on 30th December 2004, thereby specifying that the property at Sr. No. WB.189 Bara Imam Masjid, Savedi, taluka Nagar, District Ahmednagar is of Sunni sect and the nature and object of Waqf is religious and the administration of Waqf is by a scheme and is also notified immovable property belonging to said Waqf, which includes the property in question. Therefore, the Charity Commissioner had no jurisdiction in the matter of entertaining the application under

S. 36 of the Bombay Public Trust Act 1950, on behalf of the Trust.

5. We are also informed at the bar that the Trust in question is also being examined by the Waqf Board on the issue whether it is a Waqf or not, as the Waqf Act had come into force w.e.f. 1-1-1996. Therefore, we quash and set aside the impugned order and remand the matter to the learned Single Judge, with a direction that while dealing with the petition, which is impugning the order of the Jt. Charity Commissioner, refusing to grant permission to the Trust to alienate its property, decide as a preliminary issue as to whether property is governed by the Bombay Public Trust Act 1950 or the Waqf Act 1995 and then proceed to deal with the matter in accordance with law. It will be open for the parties to move the learned Single Judge for expeditious disposal of the petition.

6. During pendency of the appeal, at one stage this Court wanted to go into valuation aspect of the property, and therefore appointed an architect and valuer from the panel of this Court to ascertain the market value of the property. Accordingly, the architect and valuer were appointed at the instance of M/s. Rajvi Buildwell Pvt. Ltd., on the condition that they will bear the costs of the valuation. The architect and valuer has submitted his report to the Court along with its final bill. We are also informed that the successful bidder before the Court has deposited a sum of Rs. 4 Crores, 18 lakhs on 16th December 2005, which has been permitted to be withdrawn. In addition to this, said M/s. Rajvi Buildwell Pvt. Ltd. has also paid a sum of Rs. 3 crores, 20 lakhs to the Trust, which is admitted by the Trust of having received the said amount and the

said sum has been invested by the said Trust in a term deposit with Bank of Maharashtra. The Trust is willing to return the amount, but there is a dispute with the builder company as to the claim for the interest, which they agreed to work out. Initially, a sum of Rs. one lakh was deposited in this Court by M/s. Rajvi Buildwell Pvt. Ltd., which has been paid to the Architect and the Valuer. We direct the Rajvi Buildwell Pvt. Ltd. and others to deposit the balance amount, by deducting service and other tax in the Court, within a period of 2 weeks. Letters Patent Appeals are disposed off accordingly, with no orders as to costs.

Sd/- Sd/-

[A. A. SAYED, J.] [**J. N. PATEL, J.]**